



CANNON BUILDING
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STATE OF DELAWARE
DEPARTMENT OF STATE

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DIVISION OF PROFESSIONAL REGULATION

PUBLIC MEETING MINUTES:	Adult Entertainment Commission
MEETING DATE AND TIME:	Thursday, July 26, 2012 at 2:00 p.m.
PLACE:	Cannon Building, 861 Silver Lake Boulevard Conference Room A, Dover, Delaware 19904
MINUTES APPROVED:	October 25, 2012

MEMBERS PRESENT

James Nutter, Chairman
Maisha Britt, Public Member
Mary Kate McLaughlin, Public Member (entered at 1:13 p.m.)
Robb Carter, Public Member
Tiffany Trawick, Public Member

DIVISION STAFF/DEPUTY ATTORNEY GENERAL PRESENT

Daniel Stevenson, Deputy Attorney General
Michele Howard, Administrative Specialist II
Sheryl Paquette, Administrative Specialist III (training)

ALSO PRESENT

Christopher Miles, Leather Central
Arthur Rosenheck, DVD Depot
Jeffrey Cohen, Bob's Discount Books
Willis J. Duckery, Fairways Inn Topless Tavern
Crystal Cornwell
Steven Cornwell
Linda Davila
John Valdina

MEMBERS ABSENT

None

CALL TO ORDER

Mr. Nutter called the meeting to order at 2:06 p.m.

REVIEW AND APPROVAL OF MINUTES

MEETING MINUTES – APRIL 26, 2012

After review, Mr. Carter made a motion, seconded by Dr. Britt, to approve the April 26, 2012 minutes as presented. The motion unanimously carried.

SPECIAL MEETING MINUTES – JUNE 15, 2012

After review, Ms. Trawick made a motion, seconded by Dr. Britt, to approve the June 15, 2012 minutes as presented. The motion unanimously carried.

UNFINISHED BUSINESS

SIGN PUBLIC ORDER – FANTASIA RESTAURANT AND LOUNGE, GOLD CLUB RESTAURANT, & JEFFREY LUI

Mr. Stevenson circulated the Public Order of Fantasia Restaurant and Lounge, Gold Club Restaurant, and Jeffrey Lui for Commission signatures. Mr. Nutter did not sign the Order as he was recused from the discussion and vote. Mr. Nutter questioned, and Ms. Howard confirmed, that all Orders are public information and are posted on the Commission's website.

Ms. McLaughlin entered the meeting at 2:13 p.m.

NEW BUSINESS

REVIEW OF APPLICATIONS FOR LICENSURE RENEWAL – ADULT ENTERTAINMENT ESTABLISHMENTS

Bob's Discount Adult Books, Inc. – Jeffrey Cohen

All Commission members reviewed the application of Bob's Discount Adult Books, Inc. Mr. Cohen was present during the Commission's review of his application. The Commission had no questions for Mr. Cohen.

Dr. Britt made a motion, seconded by Mr. Carter, to approve the application of Bob's Discount Adult Books, Inc. The motion unanimously carried.

DVD Depot, Inc. – Arthur Rosenheck

All Commission members reviewed the application of DVD Depot, Inc. Mr. Rosenheck was present during the Commission's review of his application. Mr. Nutter stated that there were several charges on Mr. Rosenheck's personal criminal background report that would preclude him from licensure depending on the dispositions of the cases. Mr. Rosenheck stated that he believes the State Police may have copies of the dispositions from his original licensure application. At the Commissioner's request, Ms. Howard reviewed the minutes from the Commission's 2006 and 2007 annual renewal meetings, and read aloud the approval language for Mr. Rosenheck's establishment.

Mr. Carter made a motion, seconded by Ms. McLaughlin, to approve the application of DVD Depot, Inc. The motion unanimously carried.

Fairways Inn Topless Tavern – Willis Duckery

All Commission members reviewed the application of Fairways Inn Topless Tavern. Mr. Duckery was present during the Commission's review of his application. Mr. Carter stated that the Fairways application included 4 criminal background reports without corresponding Certificates of Individual forms, and added that the Commission cannot approve those 4 individuals at this time. Mr. Carter added that 2 individuals associated with Fairways submitted Certificates of Individual forms, but we did not receive criminal background reports for either of them. Mr. Duckery responded that both individuals had ordered their criminal background reports, and that he could pick up receipts showing the reports were ordered/paid for later in the day.

Ms. Howard read aloud the names of the 4 individuals who submitted background reports without supporting documentation, and Mr. Duckery confirmed that all 4 individuals were associated with his establishment. Ms. Howard questioned why Mr. Duckery had not named the 4 individuals on his list of employees and independent contractors. Mr. Duckery responded that that he has a problem getting social security cards from some of his independent contractors, and that he did not list anyone who did not provide a social security card. Mr. Duckery stated that he is not allowing anyone to work who cannot provide a social security card. Ms. Howard and Ms. Trawick advised that those persons without social security cards can go to the Social Security Administration office to report their cards lost or stolen, and the SSA will provide them with a document confirming their SSNs, which the Commission will accept in lieu of the actual card. Ms. McLaughlin stated that if the Commission approved Mr. Duckery's application based on the list of personnel that he submitted, then he would need to provide documentation before the Commission's next meeting of anyone new that he has hired for the Commission to review.

Ms. Howard referenced Section 1622 (a) and (b) of the Statute, which requires that licensees notify the Commission within 10 days of any personnel changes, and submit a Certificate of Individual and criminal

background report for any individuals who are newly hired. Ms. Howard advised that the other 3 licensees abide by the 10-day notification law, however, Mr. Duckery does not. Ms. Howard added that Mr. Duckery does not provide personnel updates to the Commission during the year. The list of personnel for Fairways at the end of one license year should match the list of personnel at the beginning of the subsequent license year; Fairways current application reflects 21 new individuals who have not previously been reviewed by the Commission, as well as 13 individuals who were previously approved by the Commission but are not included in the renewal application. The Commission has received no prior notification from Mr. Duckery that any personnel changes have occurred since his current license was approved in 2011.

Mr. Duckery stated that any individual not listed on his current renewal application would not be allowed to work past July 31, 2012. Mr. Duckery added that if anyone new comes in after August 1, 2012, he will give them 10 days to order a criminal background check and complete a Certificate of Individual form including a current photo, copy of social security card, and copy of a drivers license or photo ID. Mr. Duckery will then notify the Commission of Fairways' association with the individual.

Mr. Stevenson stated that DAG Patricia Davis-Oliva recommended that the Commission approve the licensure renewal application of Fairways, and file a complaint against Fairways for a violation of Section 1622 of the Board's Statute for failure to comply with the statutory obligation of notifying the Commission of all personnel changes within 10 days of the change. Mr. Nutter questioned, and Ms. Howard responded, that 1613 (b) and (e) included any independent contractors of the licensee. Mr. Nutter stated his belief that there is some "gray area" in the Statute.

Mr. Nutter stated that Mr. Duckery has until August 10, 2012 to submit a notice to the Commission regarding the separation of the 13 individuals who were previously approved to work at Fairways in 2011, and confirmation that they will not be permitted to work at Fairways as of August 1, 2012 in order to comply with the Statute. Mr. Duckery questioned, and Ms. Howard responded, that a criminal background report is good for 6 months from the date it is issued. Ms. Howard offered the scenario that if the State Police contacts the Division and requests a current roster of individuals approved to work for a specific adult entertainment establishment for an undercover investigation, then everyone working at the establishment at that time should be on the roster for that business. Ms. McLaughlin stated that it is in the licensee's best interest to keep the roster up to date.

For clarity, Mr. Nutter stated that all licensees, including Mr. Duckery, should abide by the following procedure when hiring/adding new personnel:

- Once the establishment owner agrees to hire an individual, he should collect a completed Certificate of Individual including a photo taken within 30 days, a copy of the individual's drivers license or state-issued ID, a copy of the individual's social security card, and a receipt showing payment for a criminal background report. In lieu of a copy of the individual's social security card, the Commission will accept a letter from the Social Security Administration confirming the individual's social security number.
- The individual is not to start working at the establishment until all documentation listed above has been collected by the owner of the establishment.
- All of the documentation collected must be submitted to the Commission within 10 days.
- The Commission will review the documentation at its next scheduled meeting, and approve or deny the individual to continue working at the establishment.

Mr. Carter questioned the job function of Charles Atkins. Mr. Duckery responded that Mr. Atkins works as a security guard and watches the parking lot. Mr. Carter questioned, and Mr. Duckery confirmed, that Charles Atkins is an independent contractor, and not an employee of Fairways.

Dr. Britt questioned if Mr. Duckery downloaded the application form that he submitted from the internet. Mr. Duckery responded that he was not certain where the form came from. Dr. Britt stated that the form Mr. Duckery used was from 2010 and was outdated. Dr. Britt advised Mr. Duckery to only use the current forms which can be downloaded from the Commission's website, and not use copies of obsolete forms. Ms. Howard noted that all of the Certificate of Individual forms that Mr. Duckery submitted were also outdated forms. Ms. Howard stated that the Division's policy is to reject obsolete application forms, however she confirmed that the only difference in the forms Mr. Duckery used and current forms was the language regarding criminal background reports.

Ms. Trawick questioned if the 2 bartenders employed by Fairways were out, were any of the dancers allowed to tend bar in their absence. Mr. Duckery confirmed that some of the dancers can tend bar in the absence of his 2 employed bartenders, or in the event that the bar gets busy and needs additional help.

Ms. McLaughlin made a motion, seconded by Ms. Trawick, to approve the application of Fairways Inn Topless Tavern contingent upon receipt of satisfactory criminal background checks for Whitney Evans and Bonnie MacKenzie. The motion unanimously carried.

REVIEW OF APPLICATIONS FOR LICENSURE RENEWAL – ADULT-ORIENTED RETAIL ESTABLISHMENTS

Leather Central – Christopher Miles

All Commission members reviewed the application of Leather Central. Mr. Miles was present during the Commission's review of his application. Dr. Britt questioned whether item 17 on the application had been answered. Ms. Howard read aloud the question and the response given by Mr. Miles. Ms. Howard also confirmed that the individuals named in the response to item 17 had appropriately submitted Certificates of Individual and criminal background reports for the Commission's review.

Mr. Carter made a motion, seconded by Ms. Trawick, to approve the application of Leather Central. The motion unanimously carried.

EXECUTIVE ORDER NUMBER 36 – MR. STEVENSON

Mr. Stevenson summarized Executive Order Number 36 for the Commission.

COMPLAINT UPDATES

Complaint 16-07-11 (Nutter)

Mr. Nutter reported that Complaint 16-07-11 was dismissed by the Attorney General's office, adding that the business closed and turned in its liquor license. The hearing scheduled for 5/3/12 was cancelled.

Complaint 16-01-12 (Nutter)

Mr. Nutter stated that he was assigned as the Board Contact for complaint 16-01-12. The complaint has been forwarded to the Attorney General's office.

OTHER BUSINESS BEFORE THE COMMISSION (for discussion only)

None

PUBLIC COMMENT

Mr. Duckery questioned if dancers that leave his facility because they don't want to follow his rules can work/dance at other establishments. Mr. Nutter and Mr. Carter agreed that they can dance at other establishments, but not legally since no other establishments are legally permitted for that type of adult entertainment. Mr. Duckery stated that he does not want his establishment to be negatively impacted if a dancer that is associated with Fairways is involved in illegal activity at another establishment. Ms. McLaughlin stated that Mr. Duckery's license would only be negatively impacted if the activity occurred at his establishment. Ms. Howard stated that it would be to Mr. Duckery's benefit to report any knowledge he may have regarding new criminal charges or convictions that may arise during the year for any of his independent contractors (or anyone associated with his establishment). Mr. Nutter added that Mr. Duckery is only responsible for what happens in his own establishment.

Commissioner Nutter and the establishment owners each signed their respective Affidavits for licensure. Ms. Howard distributed licenses to Jeff Cohen of Bob's Discount Books, Arthur Rosenheck of DVD Depot, Willis Duckery of Fairways Inn Topless Tavern, and Christopher Miles of Leather Central.

Ms. McLaughlin and Mr. Nutter expressed frustration with parts of the Statute, and may discuss proposing a bill to amend the Statute with DAG Kerber at a later time.

NEXT SCHEDULED MEETING

The next meeting will be held on October 25, 2012 at 2:00 p.m. in second-floor Conference Room A of the Cannon Building located at 861 Silver Lake Boulevard in Dover.

ADJOURNMENT

There being no further business, Dr. Britt made a motion, seconded by Ms. McLaughlin, to adjourn the meeting at 4:02 p.m. The motion unanimously carried.

Respectfully submitted,

A handwritten signature in black ink that reads "Michele Howard". The script is cursive and fluid, with the first name "Michele" written in a larger, more prominent style than the last name "Howard".

Michele Howard
Administrative Specialist II